

Robert J. Feinstein, Esq.
Bradford J. Sandler, Esq.
Beth E. Levine, Esq.
PACHULSKI STANG ZIEHL & JONES LLP
780 Third Avenue, 34th Floor
New York, NY 10017
Telephone: (212) 561-7700
Facsimile: (212) 561-7777
Email: rfeinstein@pszjlaw.com
bsandler@pszjlaw.com
blevine@pszjlaw.com

Counsel to Plaintiff Runway Liquidation, LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RUNWAY LIQUIDATION HOLDINGS, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 17-10466 (SCC)

(Jointly Administered)

**DAVID MacGREEVEY, solely in his capacity as
PLAN ADMINISTRATOR FOR RUNWAY
LIQUIDATION HOLDINGS, LLC, and its
affiliated POST-EFFECTIVE DATE DEBTORS**

Plaintiff,

Adv. Proc. No. _____

v.

AZRIA ENTERPRISES, INC. and AZ6, LLC,

Defendants.

¹ A list of the Post-Effective Date Debtors in these chapter 11 cases, along with the last four digits of each Post-Effective Date Debtor's federal tax identification number include: Runway Liquidation Holdings, LLC (6857); Runway Liquidation, LLC (5942); Runway Liquidation Intermediate Holdings, LLC (3673); MR Liquidation, LLC (9200); and MMH Liquidation, LLC (3854).

COMPLAINT

Plaintiff David MacGreevey, in his capacity as plan administrator (the “Plan Administrator” or “Plaintiff”) acting on behalf of Runway Liquidation Holdings, LLC (Runway Liquidation Holdings”), and its affiliated post-effective date debtors (collectively, the “Post-Effective Date Debtors” and before the Effective Date of the Plan, the “Debtors”), for his Complaint against Azria Enterprises, Inc. and AZ6, LLC (collectively, the “Defendants”), alleges upon knowledge as to his own status, and upon information and belief as to all other matters, as follows:

Nature of the Action

1. Plaintiff brings this action against the Defendants in connection with the breach of the Operating Agreement (defined below) that they entered into on February 5, 2015 as members of BCBG Max Azria Global Holdings, LLC (“BCBG Global Holdings”)

The Parties

2. Pursuant to Article IV, Section D of the Amended Joint Plan of Reorganization of BCBG Max Azria Global Holdings LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code filed July 21, 2017 (the “Plan”) [Docket #564], Plaintiff has the authority to prosecute Causes of Action², and pursuant to Article VII, Section B of the Plan, Plaintiff has the authority to “file, withdraw, or litigate to judgment objections to Claims or Interests.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

3. Defendant AZ6 is a limited liability corporation formed under the laws of the State of Delaware with a business address at 2761 Fruitland Avenue, Vernon, California 90058. At all relevant times, Defendant AZ6 was a member of BCBG Global Holdings.

4. Defendant Azria Enterprises is a corporation formed under the laws of the State of California with a business address at 2761 Fruitland Avenue, Vernon, California 90058. At all relevant times, Defendant Azria Enterprises was a member of BCBG Global Holdings.

Jurisdiction and Venue

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. This adversary proceeding is commenced pursuant to Rule 7001(1) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) sections 548 and 550 of the Bankruptcy Code, and the relevant state statutes.

Case Background

7. On February 28, 2017 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On July 26, 2017, the Court entered the Confirmation Order confirming the Plan and on July 31, 2017, the Effective Date of the Plan (as that term is defined in the Plan) occurred. *See Notice of (I) Entry of Order Confirming the Amended Joint Plan of Reorganization of BCBG Max Azria Global Holdings, LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code and (II) Occurrence of Effective Date* [Docket No. 601].

8. Pursuant to the Plan, the Debtors (now known as the Post-Effective Date Debtors) continue in existence after the Effective Date of the Plan (as that term is defined in the Plan) for purposes of, among other things, winding down the Debtors' businesses and affairs and prosecuting Causes of Action (as that term is defined in the Plan).

Facts

9. BCBG—an acronym for the French phrase "bon chic, bon genre," meaning "good style, good attitude"—was founded by Max Azria in Los Angeles, California in 1989. Over the course of the next three decades, BCBG grew to well over 550 retail stores across the United States, Canada, Europe and Japan, becoming a well-known and respected name in high-end women's apparel and accessories.

The Amended and Restated Operating Agreement

10. On or about February 5, 2015, Defendant AZ6, Defendant Azria Enterprises, and certain other entities entered into an Amended and Restated Operating Agreement of BCBG Max Azria Global Holdings, LLC (the "Operating Agreement").

11. Section 7.2 of the Operating Agreement is provides, *inter alia*: "[t]o the extent [BCBG Global Holdings] is required to pay taxes with respect to any Member and there are no contemporaneous payments or distributions to such Member from which the amount of such taxes may be withheld, **the Member shall, notwithstanding anything herein to the contrary, promptly pay to the Company the amount of such taxes.**" Operating Agreement Section 7.2 (emphasis added).

The Tax Payments

12. Between September 13, 2016 and October 17, 2016, Debtor BCBG Max Azria Group, LLC (“Group LLC”) issued three checks on behalf of Global Holdings to state taxing authorities (the “State Taxing Authorities”) for mandatory state non-resident tax withholding payments of Defendants AZ6 and Azria Enterprises in the total amount of \$526,506.00, of which \$7,332.00 is attributable to AZ6’s obligations and of which \$519,174.00 is attributable to Azria Enterprise’s obligations.

13. Specifically, on behalf of Global Holdings, September 13, 2016, Group LLC issued check number 408178 to the State of New Jersey-Corporation Business Tax in the amount of \$372,082.00 on account of \$5,325.00 in mandatory withholding payments attributable to Defendant AZ6 and \$366,847.00 in mandatory withholding payments attributable to Defendant Azria Enterprises.

14. On October 17, 2016, on behalf of Global Holdings, Group LLC issued check number 409655 to the Indiana Department of Revenue in the amount of \$14,946.00 on account of \$46.00 in mandatory withholding payments attributable to Defendant AZ6 and \$14,900.00 in mandatory withholding payments attributable to Defendant Azria Enterprises.

15. On October 17, 2016, on behalf of Global Holdings, Group LLC issued check number 409654 to the Indiana Department of Revenue in the amount of \$139,388.00 on account of \$1961.00 in mandatory withholding payments attributable to Defendant AZ6 and \$137,427.00 in mandatory withholding payments attributable to Defendant Azria Enterprises.

16. Notwithstanding the requirements of Section 7.2 of the Operating Agreement, neither Defendant AZ6 nor Defendant Azria Enterprises has reimbursed Global Holdings or Group LLC for the payments made to the State Taxing Authorities.

FIRST CLAIM FOR RELIEF
(Against Defendant AZ6)
(Breach of Contract)

17. Plaintiff repeats and realleges the allegations in paragraphs 1 through 16, above, as though fully set forth at herein.

18. Defendant AZ6 was a party to the Operating Agreement.

19. Plaintiff Runway Liquidation Holdings is the beneficiary of the Operating Agreement.

20. Defendant AZ6 breached the Operating Agreement by failing to reimburse Runway Liquidation Holdings or Group LLC for the payments it made on its behalf to the State Taxing Authorities.

21. Plaintiff Runway Liquidation Holdings has suffered damages caused by Defendant AZ6's breach of the Operating Agreement in the amount of \$5,325.00, plus interest, costs, and attorneys' fees.

SECOND CLAIM FOR RELIEF
(Against Defendant Azria Enterprises)
(Breach of Contract)

22. Plaintiff repeats and realleges the allegations in paragraphs 1 through 21, above, as though fully set forth herein.

23. Defendant Azria Enterprises was a party to the Operating Agreement.

24. Plaintiff Runway Liquidation Holdings is the beneficiary of the Operating Agreement.

25. Defendant Azria Enterprises breached the Operating Agreement by failing to reimburse Runway Liquidation Holdings or Group LLC for the payments it made on its behalf to the State Taxing Authorities.

26. Plaintiff Runway Liquidation Holdings has suffered damages caused by Defendant AZ6's breach of the Operating Agreement in the amount of \$366,847.00, plus interest, costs, and attorneys' fees.

WHEREFORE, Plaintiff prays for judgment as follows:

Against Defendant AZ6 in the amount of \$7,332.00, plus costs of suit incurred herein, including, without limitation, attorneys' fees and pre- and post-judgment interest on the judgment amount to the fullest extent allowed by applicable law;

Against Defendant Azria Enterprises in the amount in the amount of \$519,174.00, plus costs of suit incurred herein, including, without limitation, attorneys' fees and pre- and post-judgment interest on the judgment amount to the fullest extent allowed by applicable law; and

For such other and further relief as the Court may deem just and proper.

Dated: August 30, 2019
New York, NY

/s/ Beth E. Levine

Robert J. Feinstein, Esq.
Bradford J. Sandler, Esq.
Beth E. Levine, Esq.
780 Third Avenue, 34th Floor
New York, NY 10017
Telephone: (212) 561-7700
Facsimile: (212) 561-7777
Email: rfeinstein@pszjlaw.com
bsandler@pszjlaw.com
blevine@pszjlaw.com

Counsel to Plaintiff